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2 50-h HEARING

3 -----X  
4 In the Matter of the Claim of

5 VICTORIA MALONE,

6 CLAIMANT,

7 -against-

8 TOWN OF CLARKSTOWN, TOWN OF CLARKSTOWN  
9 HIGHWAY DEPARTMENT, WAYNE BALLARD, in  
10 His personal and official capacity as  
11 Clarkstown Highway Superintendent,  
12 FRANK DIZENZO, in his personal and  
13 official capacity as Clarkstown Highway  
14 Superintendent, ANDREW LAWRENCE, in his  
15 personal and official capacity, DAVID  
16 SALVO, in his personal and official  
17 capacity, ROBERT KLEIN, in his personal  
18 and official capacity, TUCKER CONNINGTON,  
19 in his personal and official capacity, and  
20 BRIAN LILLO, in his personal and official  
21 capacity,

22 RESPONDENTS.

23 -----X

24 DATE: May 2, 2019

25 TIME: 10:12 a.m.

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30 (DEPOSITION of VICTORIA MALONE)

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DATE: May 2, 2019

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TIME: 10:12 a.m.

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50-h Hearing of VICTORIA

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MALONE, the Claimant in the above-entitled

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matter, pursuant to Statute, held at the

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Law Offices of Wilson, Elser, Moskowitz,

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Edelman &amp; Dicker, LLP, 1133 Westchester

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Avenue, White Plains, New York 10604,

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before Julie Parisi, a Notary Public of the

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State of New York.

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File #: 1212900297

\* \* \*



1 V. MALONE

2 complaint to?

3 A. I gave a written complaint to  
4 Dominick Santulli.

5 Q. Who is Dominick Santulli?

6 A. He's a deputy.

7 Q. You don't recall when that was?

8 A. I don't recall an exact date,  
9 no.

10 Q. Do you recall what the  
11 substance of the complaint was?

12 A. Yes.

13 Q. What was the substance of the  
14 complaint?

15 A. Harassment.

16 Q. Specifically what were you  
17 complaining of?

18 A. I was complaining about Tucker  
19 Connington and Brian Lillo.

20 Q. Anything else?

21 A. I had written up a workplace  
22 violence report.

23 Q. When you tell me that you  
24 submitted something in writing that was  
25 what you filled out an incident report?

1 V. MALONE

2 A. Yes.

3 Q. Where did you get that incident  
4 report from?

5 A. I don't recall.

6 Q. Did you get it from a handbook?

7 A. No.

8 Q. Did you get it from something  
9 online?

10 A. No.

11 Q. Did you get it from a person?

12 A. I believe so, yes.

13 Q. Who was that?

14 A. It was a long time ago, I don't  
15 remember.

16 Q. Did you get it from Mr.  
17 Santulli?

18 A. No.

19 Q. When you first complained to  
20 Mr. Santulli was that in the form of a  
21 written incident report or something else?

22 A. No, it wasn't an incident  
23 report.

24 Q. When you first complained to  
25 Mr. Santulli how did you complain?



1 V. MALONE

2 Q. Malone?

3 A. Yes.

4 Q. And your father?

5 A. Dennis.

6 Q. Anyone else?

7 A. About everything?

8 Q. Any of the events that you've  
9 alleged in either Defendant's Exhibits A or  
10 B?

11 A. I've written complaints and  
12 sent them to the Town Board, I've also  
13 given it to Elaine Afelbaum.

14 Q. The complaints that you're  
15 telling me that you gave to the Town Board  
16 were those the same documents that you gave  
17 to Elaine or were they different documents?

18 A. Elaine had those documents as  
19 well but I had sent the complaints, I gave  
20 them to the union and I gave them to the  
21 Town Board.

22 Q. How many written complaints did  
23 you make to the Town Board?

24 A. Well, to the Town Board I can  
25 remember one right now. I would have to



1 V. MALONE

2 look at my notes.

3 Q. One complaint?

4 A. As far as I know right now.

5 Q. Did you make the same complaint  
6 to Elaine or was that something different?

7 A. I believe I did. I would have  
8 to check my notes.

9 Q. When did you make a written  
10 complaint to the Town Board?

11 A. I don't remember the exact  
12 date.

13 Q. What was the nature of the  
14 complaint?

15 A. Harassment.

16 Q. By who?

17 A. In that complaint I believe  
18 Tucker Connington and I would have to look  
19 through my notes to confirm what else I  
20 wrote.

21 Q. What were you complaining about  
22 Tucker Connington in the complaint to the  
23 Town Board?

24 A. That he was harassing me.

25 Q. Specifically what was he doing?

1 V. MALONE

2 A. Making gross noises at me and  
3 blocking the doorway.

4 MS. MASTELLONE: Mark this as  
5 Defendant's Exhibit C.

6 (Whereupon, the document was  
7 marked as Defendant's Exhibit C for  
8 identification as of this date by the  
9 Reporter.)

10 Q. Ms. Malone, I'm going to show  
11 you what's been marked as Defendant's  
12 Exhibit C and ask you to take a look at  
13 that. Do you recognize that?

14 A. Yes, ma'am.

15 Q. What is it?

16 A. It's the letter that I wrote to  
17 the Town Board.

18 Q. On Defendant's Exhibit C is  
19 there a date?

20 A. September 12th, 2014.

21 Q. So when you told me that you  
22 had written a letter to the Town Board  
23 complaining of Tucker Connington is  
24 Defendant's Exhibit C a copy of the letter  
25 that you wrote to the Town Board?



1 V. MALONE

2 Q. Okay.

3 A. And the one that I'm referring  
4 to is in the deputies' office and they  
5 designated it a women's room but the men  
6 still used it.

7 Q. So earlier when you were  
8 explaining a bathroom that had two lockers  
9 in it, a sink and a toilet and a shower  
10 which bathroom is that?

11 A. The one that they designated  
12 the women's room in the deputies' Office.

13 Q. So when you were alleging that  
14 men were using the bathroom which bathroom  
15 were you alleging that they were using, the  
16 women's room that was in the main office or  
17 the bathroom that was in the deputies'  
18 office?

19 A. The bathroom that was in the  
20 deputies' office.

21 Q. When was it designated as a  
22 women's room the one in the deputies'  
23 office?

24 A. 2010.

25 Q. Did it have a sign on it?

1 V. MALONE

2 A. They put a sign on it.

3 Q. What did the sign say?

4 A. At first I believe it was only  
5 a women in a skirt.

6 Q. Did the sign change at some  
7 point?

8 A. Yes.

9 Q. What did it change to?

10 A. Women's.

11 Q. Who changed the sign?

12 A. Rob Kaminski.

13 Q. When was the sign changed?

14 A. I don't know exactly.

15 Q. What men were using the women's  
16 room or the designated room within the  
17 deputies' office, who did that?

18 A. Tucker Connington Jeff  
19 Lawrence, Joe Profena.

20 Q. Were there occasions --

21 MS. FOTI: Were you done?

22 THE WITNESS: No.

23 A. Those were the only three that  
24 I saw, I'm not sure about anybody else.

25 Q. Were you ever in the ladies'



1 V. MALONE

2 get into what she said before but I  
3 think I understand what she's saying.

4 Q. So did he give a reason why you  
5 were precluded from using the bathroom in  
6 the deputies' office?

7 A. Say that again, I'm sorry.

8 Q. Did he give you a reason why  
9 you were precluded from using the bathroom  
10 in the deputies' office?

11 A. I don't know what precluded  
12 means.

13 Q. He told you you couldn't use  
14 it, right?

15 A. No. He told me I couldn't use  
16 the bathroom in the women's office.

17 Q. Did he give a reason why you  
18 couldn't use the bathroom in the women's  
19 office?

20 A. Because Wayne didn't want me  
21 near his office.

22 Q. Did he say why?

23 A. He said that I was some sort of  
24 spy.

25 Q. Who said that you were a spy?





1 V. MALONE

2 close to the road they were on like Town  
3 property. So what they would do is collect  
4 them and throw them in the corner in like  
5 the dirt and after a certain period of time  
6 you would have to sort through the signs,  
7 count how many of each were there, what the  
8 company name was, and then throw them out.  
9 So that was one of my jobs.

10 Q. Why did you complain about  
11 having to do that?

12 A. Because I was the only one who  
13 was told to do it and it was disgusting  
14 because there was mud all over the place,  
15 there was dirt, there were bugs.

16 Q. What time period was this?

17 A. I don't know exactly.

18 Q. Do you know the year?

19 A. I can't recall.

20 Q. You're telling me you  
21 complained to Mr. Lawrence about having to  
22 clean the floors in the office?

23 A. Yes, ma'am.

24 Q. Why did you complain about  
25 that?

1 V. MALONE

2 A. Because I didn't think that it  
3 was fair and I didn't think that I should  
4 have to do that when there's a cleaning  
5 staff.

6 Q. What time period did you make  
7 that complaint?

8 A. I don't remember exactly.

9 Q. Was anyone else from the  
10 Highway Department required to clean the  
11 floors in the office?

12 A. No.

13 Q. Ever?

14 A. Not to my knowledge.

15 Q. You're telling me you  
16 complained to Mr. Lawrence about poison  
17 ivy?

18 A. Yes.

19 Q. What was the nature of that  
20 complaint?

21 A. I told them that I kept on  
22 getting it and I didn't understand. And he  
23 said that there was a protocol for you're  
24 supposed to peel the poison ivy off of the  
25 tree before you cut into it because if you

1 V. MALONE

2 just cut into the vine then the oils spray  
3 all over the place, but if you pull it off  
4 then nothing sprays anywhere so I  
5 complained about that.

6 Q. You complained about the  
7 protocol or you complained --

8 A. I complained that they didn't  
9 follow it and I was getting poison ivy all  
10 the time.

11 Q. Who wasn't following the  
12 protocol?

13 A. Well, the two people that  
14 mainly cut trees are Brian Lillo and Chris  
15 McDermott, but Dave Salvo also did.  
16 There's another job I was assigned to as  
17 well other than cleaning I was assigned to  
18 being number one truck washer. So I was  
19 the only one that would wash everybody's  
20 truck on a daily basis. And I complained  
21 about that because again I didn't think  
22 that was fair and I asked them why he was  
23 putting me on that job and he said because  
24 -- first he said that because women are  
25 good at cleaning, that's what women should

1 V. MALONE

2 be doing is cleaning.

3 Q. Who said that?

4 A. Andy Lawrence.

5 Q. What time period did you make  
6 that complaint?

7 A. I don't remember, I can't give  
8 you a specific date. And also while I was  
9 doing that job I was cleaning trucks and  
10 Steve Peters had been in the area and Wayne  
11 Ballard also walked into the same area at  
12 that time and Steve Peters had basically  
13 stuck up for me and said why do you have  
14 her and only her washing the trucks, like  
15 they were in a confrontation. He said  
16 because women are better at certain things  
17 than men.

18 Q. You don't remember when that  
19 was?

20 A. Not a specific time.

21 Q. You mentioned Dominick Santulli  
22 as a person that you made complaints to,  
23 correct?

24 A. Right.

25 Q. What did you complain to Mr.



1 V. MALONE

2 Q. Beginning with you allege that  
3 Mr. Dizenzo invited you to sit on his face,  
4 correct?

5 A. Yes.

6 Q. When did that happen?

7 A. It happened multiple times.

8 Q. When?

9 A. Both when he wasn't supervisor  
10 and when he was supervisor.

11 Q. What year?

12 A. I don't remember an exact year,  
13 an exact date.

14 Q. Do you remember an approximate  
15 year?

16 A. No.

17 Q. You said multiple times,  
18 approximately how many times did it happen?

19 A. A lot of years in between that,  
20 it happened many times.

21 Q. Tell me what would happen when  
22 he would say it?

23 A. He would say you need a place  
24 to sit hold on, wipe his face, tilt his  
25 head back and stick his tongue out.

1 V. MALONE

2 Q. When he would do it was anyone  
3 else around besides you?

4 A. Not that I recall at this time.

5 Q. You don't recall whether any of  
6 the other guys were present when he would  
7 say that?

8 A. I'm sure there were I just  
9 can't --

10 Q. You can't remember? Do you  
11 remember where any of these incidents  
12 happened?

13 A. Yes, one happened in his  
14 office.

15 Q. When did that happen?

16 A. When he was supervisor. I  
17 don't remember an exact date.

18 Q. When you were in his office and  
19 he said that to you was anybody else  
20 present for that incident?

21 A. I don't believe so.

22 Q. Where did the other incidents  
23 happen?

24 A. I can't pinpoint.

25 Q. You don't know?

1 V. MALONE

2 A. I don't know, I'd have to think  
3 more.

4 Q. During the course of your  
5 employment with the Town did Mr. Dizenzo do  
6 anything else that you found harassing or  
7 offensive?

8 A. Yes.

9 Q. What?

10 A. When I was on my way to the  
11 bathroom he would ask me if I need help and  
12 he would cup his hand and like follow me to  
13 the bathroom.

14 Q. When did he do that?

15 A. While he was in office.

16 Q. Do you know the year?

17 A. And when he wasn't in office.

18 Q. What does that mean when he  
19 wasn't in office?

20 A. Both before and while he was in  
21 office.

22 Q. I don't understand what you  
23 mean by that?

24 A. I mean when he was working as  
25 an MEO-2 and when he was supervisor.





1 V. MALONE

2 Q. Did you request that?

3 A. Yes.

4 Q. Who did you make that request  
5 to?

6 A. I wrote a letter to the union.

7 Q. When?

8 A. When they had assigned me that  
9 bathroom, and they had assigned me an  
10 electrical room, and it was disgusting. It  
11 was full of, like, rat feces, and they had  
12 assigned me to change in there. So, I had  
13 written a letter of complaint to the union  
14 stating that this is the bathroom they're  
15 making me use. I have to share it with the  
16 men. And this is the place that they gave  
17 me to change. So, they fixed it after a  
18 period of time, but they had put a shower  
19 in and two lockers.

20 Q. Now, you mentioned that they  
21 had told you to change in an electrical  
22 room, correct?

23 A. Yes.

24 Q. When did that happen?

25 A. That happened around the same



1 V. MALONE

2 A. I would lock the door, but they  
3 would forget to lock the door. So, I would  
4 walk in on them taking a number two.

5 Q. When did that happen?

6 A. From 2010 until about -- I'm  
7 trying to think of when one of the guys  
8 retired, because I walked on him,  
9 specifically, taking a poop in the  
10 bathroom.

11 Q. Who was that?

12 A. Joe Profenna.

13 Q. Joe Profenna?

14 A. Yes.

15 Q. And you remember walking in on  
16 him the year that he was retiring; is that  
17 what you're saying?

18 A. The year before he was  
19 retiring, I believe, yes.

20 Q. Do you recall when that was?

21 A. 2017.

22 Q. Okay.

23 A. Maybe 2016, on or around there.

24 Q. I don't want to interrupt you.

25 I'm sorry.



1 V. MALONE

2 Q. Why? Why not?

3 A. You see, I'm the only girl out  
4 of a lot of men --

5 Q. I understand.

6 A. -- and it is really hard. You  
7 don't want to be black-balled. I can't be  
8 black-balled. I need to work with these  
9 people until I'm 55. You complain about  
10 somebody, you got to complain about  
11 everybody. And you can't -- no one's going  
12 to stick up for you. Nobody is going to  
13 back you up. You say something, and  
14 everybody goes against you. They're not  
15 going to want to work with you, they're  
16 going to say bad things about you, it's  
17 going to be extremely uncomfortable to go  
18 to work. Don't complain. And I was warned  
19 not to complain. I was warned not to say  
20 anything by somebody who was higher in  
21 office, because things would get much worse  
22 for me. The boss hated me. So, there was  
23 no --

24 Q. Meaning, Ballard? Ballard  
25 hated you?

1 V. MALONE

2 A. Yeah.

3 Q. Okay. And you were told by  
4 Andy Lawrence not to complain, because he  
5 told you things would get worse for you,  
6 right? That's what your testimony was on  
7 Thursday?

8 A. Yes.

9 Q. Okay. Did you ever ask for a  
10 transfer to a different department?

11 A. No, I struggled my entire life  
12 with finding something that I'm good at. I  
13 went to school for a really long period of  
14 time, and I couldn't -- I had trouble. So,  
15 I finally found something that I'm good at,  
16 that I can wake and say, oh, I'm actually  
17 good at this, like, I can't wait to go to  
18 work, because I know that I can do my job  
19 and I can do it well. I'm an excellent  
20 machine operator. And I can't do what I'm  
21 supposed to do because of all this that's  
22 going on.

23 Q. Okay.

24 A. Every day is uncomfortable. I  
25 don't sleep.





1 V. MALONE

2 Q. Were you ever warned by anyone  
3 at the town to stay away from  
4 Mr. O'Connell?

5 A. No.

6 Q. Did Mr. O'Connell ever tell you  
7 to stay away from him?

8 A. No.

9 Q. Did you ever tell Mr. O'Connell  
10 to stay away from you?

11 A. Yes.

12 Q. When?

13 A. When he tried to hit me in the  
14 parking lot.

15 Q. Now, you indicated that on  
16 March 27th of 2015 you had a meeting with  
17 Mr. Lawrence; is that right?

18 A. Yes.

19 Q. And who was present for that  
20 meeting?

21 A. Me, Andy Lawrence, Steve  
22 Peters, and Rory O'Connell.

23 Q. And what was your understanding  
24 of why the meeting was being held?

25 A. To stop the harassment.



1 V. MALONE

2 that?

3 A. It was better than nothing  
4 happening.

5 Q. At the time that you met with  
6 Mr. Lawrence on March 27th of 2015, and  
7 Mr. Peters and Mr. O'Connell, had you  
8 already completed the incident report  
9 that's been marked as Defendant's Exhibit  
10 D?

11 A. Can you repeat that question?  
12 I'm sorry.

13 MS. MASTELLONE: Read back,  
14 please.

15 (Whereupon, the referred-to  
16 question was read back by the  
17 Reporter.)

18 A. I believe this was written  
19 after.

20 Q. Why? Why do you believe that?

21 A. Because it says he continued to  
22 harass me after the meeting.

23 Q. When was this incident report  
24 completed? Exhibit D.

25 A. I don't know.

1 V. MALONE

2 Q. Okay. So, it's your belief  
3 that it was completed sometime after March  
4 27th of 2015?

5 A. Yes.

6 Q. And the basis of that is  
7 because there were incidents occurring with  
8 Mr. O'Connell that happened after  
9 March 27th of 2015?

10 A. Yes.

11 Q. What happened after March 27th  
12 of 2015 with Mr. O'Connell?

13 A. The same things that he was  
14 doing before. It was no different. So,  
15 the letter that was put into his file  
16 obviously didn't work so well, because I  
17 was still getting harassed in the parking  
18 lot.

19 Q. After March 27th of 2015, did  
20 he push you?

21 A. No, the pushing only happened  
22 once.

23 Q. After March 27th of 2015, did  
24 he try to shut your hand in a door?

25 A. Yes.



1 V. MALONE

2 you took yourself, right?

3 A. It's not a photograph.

4 Q. That you took yourself?

5 A. No.

6 Q. And you called it a GoGirl?

7 A. Yes.

8 Q. Why did you call it that?

9 A. Because that's the name of it.

10 Q. How do you know that?

11 A. Because it was given to me and  
12 that's the name of it on the outside of the  
13 container.

14 Q. Who gave it to you?

15 A. Frank DiZenzo.

16 Q. When?

17 A. 2016.

18 Q. He gave it to you in what  
19 context, as a gift, at a party, something  
20 else?

21 A. As a gift.

22 Q. What kind of gift?

23 A. In a gift bag.

24 Q. Was it a particular time of  
25 year, was it at a party, something else?

1 V. MALONE

2 A. It was just in the office.

3 Q. Was it at a holiday party?

4 A. No.

5 Q. Were holiday parties held in  
6 the office?

7 A. In the lunchroom.

8 Q. They were held in the office?

9 A. Yes.

10 MS. FOTI: Objection. She said  
11 the lunchroom.

12 Q. The lunchroom is in the office,  
13 correct?

14 A. Well, it's outside.

15 Q. So, you're saying Mr. DiZenzo  
16 gave this to you as a gift in 2016?

17 A. Yes.

18 Q. Was anyone there when he gave  
19 it to you?

20 A. Yes.

21 Q. Who was there?

22 A. Deputies were there, Andy  
23 Lawrence was there, Dominic Santulli.

24 That's all, specifically -- I know there  
25 were more people there, but I remember them





1 V. MALONE

2 Q. Okay. Which happened  
3 afterwards?

4 A. The -- when he went into the  
5 office.

6 Q. Okay. I'm confused. The  
7 incident with the gloves happened first?

8 A. Yes.

9 Q. And then Mr. Salvo made a  
10 complaint about you in terms of the manner  
11 in which you were flagging at a job site?

12 A. Correct.

13 Q. Do you know what the time  
14 period between those two incidents was?

15 A. Not off the top of my head, no.

16 Q. Was it year, months, days?

17 A. It definitely wasn't years. I  
18 think it was - definitely it wasn't days.  
19 I would go with months. Weeks, months.  
20 I'd have to look at my notes to give you an  
21 exact...

22 Q. Did you ever file a grievance  
23 with regard to Mr. Salvo's behavior?

24 A. I did file a grievance, yes.

25 Q. What was the nature of the

1 V. MALONE

2 grievance?

3 A That he had complained, and I  
4 was taken out of my crew. And they had  
5 made overtime, and they got comp time on a  
6 particular day. And that's when I was  
7 moved. So, I filed a grievance stating  
8 that I missed out on time, comp time, and  
9 money.

10 Q. Okay. What was the result of  
11 the grievance?

12 A There was no result.

13 Q. Was it settled?

14 A No, that's still -- I'm waiting  
15 for arbitration.

16 Q. Who is Christopher McDermott?

17 A Christopher McDermott works in  
18 the tree crew.

19 Q. Just going back for one second  
20 to Mr. Salvo. As part of your grievance,  
21 did you make any mention of Mr. Salvo  
22 complaining about the manner in which you  
23 were flagging at a particular job site?

24 A I'm sorry, can you repeat that  
25 question?